1011

SUPREME COURT OF THE UNITED STATES.

No. 137.

LESSEE OF WILLIAM C. FRENCH AND WIFE,
PLAINTIFF IN ERROR,

vs.

WILLIAM H. SPENCER, JR., & AL.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF INDIANA.

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GIDEON, Print.

Pleas of the circuit court of the United States for the seventh judicial circuit and district of Indiana, begun, continued, and holden at Indianapolis, in said district, on the (12th) twelfth day of December, that being the (23d) twenty-third judicial day, in the year of our Lord one thousand eight hundred and fifty-six. Present the honorable Elisha M. Huntington, judge of said court.

JOHN DOE, ex dem.
FRENCH et al.,
vs.
RICHARD ROE. } Ejectment.

Be it remembered that at the November term of said court for eighteen hundred and fifty-five,

Now comes the plaintiff, by his attorney, and it appearing to the satisfaction of the court that William H. Spencer, Joseph Spencer, and Anna A. Spencer, claim the legal title to the premises in the declaration mentioned, and desire to defend herein, are infants; it is therefore ordered that Amory Kinney, esq., be appointed guardian ad litem to said infants herein, and that he appear and plead herein for them. And hereupon the plaintiff and said infants, by said guardian ad litem, file a consent rule herein, in the words following, to wit:

Now comes the plaintiff, by McDonald, his attorney, and William H. Spencer, and Joseph Spencer, and Anna A. Spencer come by Amory Kinney, their guardian ad litem, appointed by the court. And it is ordered by the consent of said parties that William H. Spencer, Joseph Spencer, and Anna A. Spencer be admitted defendants herein, in the stead of the now defendant, Richard Roe, and do forthwith appear at the suit of the plaintiff, and receive a declaration in ejectment for the premises in question, and forthwith plead thereto not guilty, and, upon the trial, confess lease, entry, and ouster, and admit themselves to have been in the possession of said premises at the time of the bringing of this action, and insist upon the title only; otherwise let judgment be given by default against the said Richard Roe; and if, upon the trial of said issue, the said William H. Spencer, Joseph Spencer, and Anna A. Spencer, shall not so confess lease, entry, ouster, and possession, whereby the plaintiff shall not be able to prosecute his suit against them, then no costs shall be allowed for not prosecuting the same, but they shall pay the costs to the plaintiff to be taxed. And it is further ordered, that if on the trial of said issue a verdict shall be given for them, or if the plaintiff shall be non-suited, then the plaintiff shall pay to them the costs to be taxed.

D. M'DONALD,
Plaintiff's Att'y.

A. KINNEY,
Guardian ad litem,
And J. P. USHER,
Att'ys for Def'ts.

[REC. CXXXVII, D. T., 1857.]—1

And the plaintiff now files a new declaration herein against said infants, in these words, to wit:

INDIANA, *ss.*

John Doe complains of William H. Spencer, Joseph Spencer, and Anna A. Spencer, citizens of the State of Indiana, of a plea of trespass and ejectment, for that William C. French and Minerva French, his wife, citizens of the State of Michigan, on the first day of May, 1840, had demised in said district, to the plaintiff, the following lands and tenements, to wit: 320 acres of arable land, 320 acres of pasture land, 320 acres of meadow land, 10 messuages, 10 dwelling-houses, ten yards, ten gardens, and the northeast quarter of section one, in township No. twelve north, of range No. nine west, and the northwest quarter of section No. 15, in the same township and range of the district of lands sold at Vincennes, Indiana, with the appurtenances, situate in the county of Viego, in the district of Indiana, of the value of 20,000 dollars, to have and to hold the same to the said John Doe, from the day and year aforesaid, for and during the term of 50 years thence next ensuing, and the said John Doe, by virtue of said demise, then and there entered upon said lands and tenements, with the appurtenances, and was possessed thereof for the term aforesaid, and he being so thereof possessed, the said defendants then and there, with force and arms, entered into said lands and tenements, and ejected him therefrom.

And also, for that, on the day and year aforesaid, in the district of Indiana aforesaid, the said William C. French, and Minerva French, his wife, had, in her right, demised to the said John Doe, in said district, the following other lands and tenements, to wit: the undivided half of 320 acres of meadow land, 320 acres of arable land, 320 acres of pasture land, 320 acres of unenclosed land, 10 messuages, 10 dwelling-houses, ten out-houses, 10 yards, 10 gardens; and the northeast quarter of section No 1, and the northwest quarter of section No. 15, in township No. 12 north, of range No. 9 west, of the district of lands sold at Vincennes, Indiana, situate in Viego county, in the district of Indiana, of the value of 20,000 dollars, to have and to hold to the said John Doe, from the day and year aforesaid, for and during the term of 50 years thence next ensuing; and the said John Doe, by virtue of said demise, then and there entered into and upon said lands and tenements, with the appurtenances, and was possessed thereof for the term aforesaid; and he being so possessed thereof, the defendants afterwards, then and there, entered into and upon said lands and tenements, with the appurtenances, with force and arms, and ejected him therefrom.

And the plaintiff says, that by reason of the premises he has sustained damages in the sum of one cent, and therefore he sues, &c.

THOMPSON, SCOTT, HUDSON & McDONALD,
Plaintiff's Att'ys.

And the defendants file their plea of not guilty thereto, in these words, to wit:

Now come the defendants by Amory Kinney, esq., their guardian ad litem, appointed by the court herein, and defends, &c., and say that they are not guilty of the force and injury in the declaration mentioned; and of this they put themselves upon the country, &c.

A. KINNEY,
Guardian ad litem, and Att'y for Deft's.

And the plaintiff doth the like.

D. McDONALD,
Plff's Att'y.

And on motion this cause is continued till the next term of this court.

And afterwards, to wit, at the May term of said circuit court for the year 1856,

Come the parties by their attorneys, and by their agreement this cause is continued until the next term of this court.

And afterwards, to wit, at a circuit court of the United States, begun, continued and holden at Indianapolis aforesaid, before the said judge as aforesaid, on the 31st day of December, eighteen hundred and fifty-six, that being the thirty-first day of said November term for 1856,

Come now the parties, by their attorneys, and the defendants move the court to suppress the interrogatories Nos. 2 and 3, and the answers thereto, of the cross-examination in the deposition of Amos Rice, and the proof being heard, the court sustain said motion, and suppress said interrogatories and answers. And thereupon the issue being joined, a jury is called to try the same, and come, to wit: Robert A. Taylor, [2]Joseph R. Wainscott, [3]Christopher R. Rudd, [4]John F. Merrill, [5]Canada Cowen, [6]William Campbell, [7]Aaron Wright, [8]David Kemp, [9]John Klingensmith, [10]William T. Harris, [11]William W. Hamilton, and [12]George W. Finch, twelve good and lawful men of the district of Indiana, who being duly empanelled and sworn to well and truly try the issue joined between the parties, who, after hearing the evidence and the argument of counsel, and receiving the charge of the court, and after due deliberation had, returned into court *into* the following verdict, to wit: "We, the jury, find the defendants not guilty."

And this cause is continued until the next term of this court.

And afterwards, to wit, at a circuit court begun, continued and holden at the same place as aforesaid, and before the Hon. John McLean, one of the justices of the Supreme Court of the United States, and judge of the said seventh circuit, and the Honorable Elisha M. Huntington, judge of said district, on the 19th day of May, in the year of our Lord one thousand eight hundred and fifty-seven, that being the 2d judicial day of said term of said court,

Come now the parties, by their counsel aforesaid; and the court having overruled the plaintiffs' motion for a new trial herein, it is therefore considered that the plaintiffs take nothing by their said suit,

and that the defendants recover of the lessors of the plaintiffs their costs and charges by them about their suit in that behalf expended, taxed at dollars and cents.

And plaintiffs in mercy, &c.

And also at the same time the plaintiff filed the following bill of exceptions, to wit:

JOHN DOE, ex dem. WILLIAM C. FRENCH et al.,
vs.
WILLIAM H. SPENCER, junior, et al.

Be it remembered, that on the trial of this cause the plaintiff adduced and laid before the jury, evidence tending to prove that one Silas Fosgit, who had been a Canadian volunteer in the army of the United States, in the last war with Great Britain, had died between the 28th day of June, 1816, and the 29th day of June, 1823, and also evidence tending to prove that his only heirs at law are and were the said Minerva French, (wife of said William C. French,) residing in the State of Michigan, and one Aruna Fosgit, residing in the State of New York, and that said Minerva French is, as such heir, entitled to one equal undivided half of all the lands of which said Silas Fosgit died seized.

The plaintiff then offered in evidence and read to the jury the copy of a patent duly certified by the Commissioner of the General Land Office, under the seal of said office, admitted by the defendants to be proper evidence in this cause; which copy of said patent is as follows, to wit:

James Monroe, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that in pursuance of the act of Congress, passed on the fifth day of March, 1816, entitled "An act granting bounties in lands and extra pay to certain Canadian volunteers," Silas Fosgit, late a private in the corps of Canadian volunteers, having deposited in the General Land Office a warrant in favor of the said Silas Fosgit, numbered eight, there is therefore granted by the United States unto the said Silas Fosgit certain tracts of land, viz: the northeast qr. of section one, of township twelve N., in range nine west, and the northwest qr. of section fifteen, of township twelve N., of range nine west, in the district of Vincennes: to have and to hold the said lands, with the appurtenances thereof, unto said Silas Fosgit, his heirs and assigns forever.

In testimony whereof, I have caused these letters patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at Washington, the 26th day of October, in the year of our Lord one thousand eight hundred and sixteen, and of the independence of the United States of America the forty-first.

JAMES MONROE.

By the President:

[SEAL.] JOSIAH MEIGS,
Commissioner of the General Land Office.

Be it remembered, also, that the plaintiff proved on the trial of this cause, that the undivided half of the lands described in the declaration was at the time of the commencement of this suit, and now is, worth more than two thousand dollars; and that the plaintiff, by the evidence above set forth, and by other proper evidence, made out a prima facie case, proper to be left to the consideration of the jury, and such as might, if there had been no other evidence in the case as hereinafter stated, have justified the jury in finding a verdict for the plaintiff, by virtue of her claim of title as an heir of said Silas Fosgit, under the patent aforesaid.

Be it also remembered, that on the trial of this cause the defendant produced and read in evidence the original patent of which the foregoing is a copy, which appeared to have been duly executed, and under the seal of the General Land Office aforesaid, and signed and attested as in said copy is stated.

Which patent had been deposited by one Abraham Markle with George Horner, of Avon, N. Y., in 1817, who delivered the same to the defendants in 1854.

Be it also remembered, that on the trial of this cause, the defendants offered to the jury evidence tending to prove that they are the only children and heirs at law of one William H. Spencer, senior, who died in the year 1852.

It also appeared in evidence that the said warrant issued to said Silas Fosgit was, by his agent Abraham Markle, located on the lands in dispute, on the 3d day of June, 1816; that said Silas Fosgit and William H. Spencer resided at that time in New York; that at that time it took, in the course of the mails, three or four weeks to transmit intelligence from Indiana to New York; that said Spencer died in possession of the lands in dispute, claiming title thereto; that the defendants have ever since held possession thereof, claiming title thereto; and that before the bringing of this suit, the lessors of the plaintiff had, in the year 1855, demanded possession of said lands from the defendants.

Be it remembered, also, that on the trial of this cause, after the evidence aforesaid had been offered, the defendants produced and offered to read in evidence a certain writing, having first duly proved the execution thereof to the satisfaction of the court; which writing is as follows, to wit:

Whereas I, the undersigned, Silas Fosgit, late a private in the corps of Canadian volunteers, commanded by Lieutenant Col. Joseph Wilcox, deceased, lately in the service of the United States of America, according to the provisions of an act of Congress of the United States of America, passed March 5th, 1816, entitled An act granting bounties in lands and extra pay to certain Canadian volunteers, having applied for, have obtained a warrant issued by the Secretary of the Department of War, for the location of three hundred and twenty acres of land within the Indiana Territory, agreeably to the directions of said act:

Now know all men by these presents, that I, the said Silas Fosgit, for and in consideration of the sum of five hundred dollars to me in

hand paid by William H. Spencer, esquire, of Genesee, in the county of Ontario and State of New York, the receipt whereof I do hereby confess and acknowledge, have assigned and set over, and by these presents do grant, bargain, sell, transfer, assign, and set over to said William H. Spencer, his heirs and assigns forever, the said three hundred and twenty acres of land; to have and to hold the same in as full and ample manner as I, the said Silas Fosgit, my heirs or assigns, might or could enjoy the same by virtue of the said warrant or otherwise. And I do for myself, my heirs and assigns, hereby authorize and empower the said William H. Spencer, his heirs and assigns, to make location of the said lands under and by virtue of the said warrant and agreeably to the directions of the said act; and upon location thereof being made as aforesaid, to demand and receive a patent or deed of and for the said lands in his own name and for his sole use, benefit, and behoof; to the which end and intent I, the said Silas Fosgit, have and do make, ordain, constitute, and appoint the said William H. Spencer, his heirs and assigns, my true and lawful attorney and attorneys, irrevocable, to ask, require, demand, and receive the said deed or patent of and for the said land, and also to make location thereof, and one or more attorney or attorneys under him to constitute; and whatsoever the said William H. Spencer or his attorney or attorneys shall lawfully do in the premises, I, the said Silas, do hereby allow and confirm.

In testimony whereof, I have hereunto set my hand and seal this 28th day of June, 1816.

SILAS FOSGIT. [SEAL.]

In presence of—
GEO. HORNER.

Which said writing appeared to have been duly acknowledged on the 28th day of June, 1816, in the State of New York, before a notary public of that State; and also on the same day before a justice of the peace of the Ontario county in the same State.

To the reading of which said writing in evidence in this cause the plaintiff, when the same was so offered as aforesaid, objected, for the following among other causes, to wit:

1. Because said writing is upon its face void, as being in violation of the acts of Congress touching the subject of bounties in lands for military services, and against the public policy of the United States on that subject.

2. Because said writing, on a fair legal construction of its terms, conveys no legal title (and, indeed, no title at all of any kind) to the lands in question.

3. Because said writing is irrelevant, and incompetent as evidence in this cause.

But the court overruled said objection, and permitted the defendants to read said writing in evidence; and the same was read accordingly. To which opinion of the court, in overruling said objection and in permitting said writing to be read in evidence as aforesaid, the plaintiff, by his counsel, then and there excepted.

Be it also remembered, that after the evidence aforesaid had been offered and shown before the jury, in manner aforesaid, the court thereupon instructed the jury that the said writing, signed "Silas Fosgit," and dated June 28th, 1816, a copy of which is above set forth, is a complete defence to this action; that the patent issued to Fosgit related back to the location of the warrant and constituted a part of Spencer's title, and that the jury should find for the defendants; and the jury found accordingly.

To which opinion of the court, in giving the instructions aforesaid, the plaintiff, at the time when said instructions were given, excepted.

And the plaintiff prays that this, his bill of exceptions, be signed and sealed by the court, and made a part of the record herein, which is done.

E. M. HUNTINGTON. [SEAL.]

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the judges of the circuit court of the United States, for the seventh circuit and district of Indiana, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said circuit court for the district aforesaid, before you, between John Doe, on the demise of William C. French and Minerva French, his wife, and William H. Spencer, junior, Joseph Spencer, and Fannie Spencer, a manifest error hath happened, to the great damage of the said John Doe, on the demise aforesaid, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on seventh day of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 3d day of June, in the [L. S.] year of our Lord eighteen hundred and fifty-seven, and of the independence of the United States the 81st.

H. BASSETT, *Clerk.*

I allow a writ of error in this case.

JOHN McLEAN,
Just. Sup. Court U. S.

3 June, 1857.

Supersedeas Bond.

JOHN DOE, on the demise of William C. French and Minerva French, his wife,
vs.
WILLIAM H. SPENCER, junior, Joseph Spencer, and Fannie Spencer.

In error to the United States Circuit Court for the district of Indiana.

Know all men by these presents, that I, the undersigned, am held and firmly bound unto the above named William H. Spencer, junior, Joseph Spencer, and Fannie Spencer, in the sum of five hundred dollars, to be paid to said William H. Spencer, Joseph Spencer, and Fannie Spencer, their executors or administrators; to which payment, well and truly, I bind myself, my heirs, executors, and administrators. Sealed with my seal, and dated the 31st day of May, 1857. Whereas the above plaintiff, John Doe, on the demise of William C. French and Minerva French, his wife, has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled case by the United States circuit court for the district of Indiana:

Now, therefore, the condition of this obligation is such, that if the above named John Doe, on the demise aforesaid, shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

R. N. HUDSON. [SEAL.]

I approve the above bond, signed by Robt. N. Hudson.

E. M. HUNTINGTON, *Judge*.

June 4th, 1857.

Citation.

UNITED STATES OF AMERICA, *ss*.

To William H. Spencer, junior, Joseph Spencer, and Fannie Spencer, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the seventh circuit and district of Indiana, wherein John Doe, on the demise of William C. French and Minerva French, his wife, is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable John McLean, one of the justices of the

Supreme Court of the United States, this 4th day of June, in the year of our Lord 1857.

JOHN McLEAN,
Just. Sup. Court U. States.

Service of this citation is acknowledged this June 22d, 1857.

J. P. USHER,
Att'y for Def'ts in Error.

INDIANA DISTRICT, *ss.*

I, Horace Bassett, clerk of said circuit court, do certify the foregoing to be a true and correct transcript from the records now in my office, in the above entitled case, together with the original writ of error and copies of the bond and citation, and the cost of this appeal, taxed at seven dollars and 55 cents.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said circuit court, at Indianapolis, this 24th day of June, 1857.

HORACE BASSETT, *Clerk.*

JOHN DOE, ex dem. William C. French and Minerva French,
vs.
WILLIAM H. SPENCER, Joseph Spencer, and Anna A. Spencer.

In error to the United States Circuit Court for the district of Indiana.

The said plaintiff now comes and says, that in the judgment and proceedings in the within and above entitled case there is manifest error in this, to wit:

1. Said circuit court erred in admitting against the plaintiff's objection the writing copied in the bill of exceptions, signed "Silas Fosgit," and dated 28th June, 1816, as evidence for the defendants.

2. The said circuit court erred in giving the instructions which it gave to the jury.

3. Said circuit court erred in this, that the said court rendered final judgment in said cause for the defendants; whereas such final judgment ought to have been rendered for the plaintiff.

Wherefore the plaintiff prays that said judgment be reversed; that the verdict of the jury therein be set aside, and that another trial of said cause be awarded.

R. W. THOMPSON,
D. McDONALD,
Pl'ff's Att'ys

Filed 3d Aug., 1857.

1017.

SUPREME COURT OF THE UNITED STATES.

No. 139.

THE UNITED STATES, APPELLANTS,

vs.

MICHAEL C. NYE.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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Transcript of the Proceedings in case No. 226, Michael C. Nye, claimant, vs. The United States, defendant, for the place named "Willy."

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the Private Land Claims in the State of Cal'a.

Be it remembered, that on this tenth day of May, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Michael C. Nye, for the place named "Willy," was presented and ordered to be filed and docketed with No. 226, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *September 3d*, 1852.

In case No. 226, Michael C. Nye, for the place named "Willy," the deposition of John Sanders, a witness in behalf of the claimant, taken before Commissioner James Wilson, was filed.

(Vide page 4 of this Transcript.)

SAN FRANCISCO, *January 4th*, 1853.

In the same case the deposition of Samuel J. Hensley, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 6 of this Transcript.)

SAN FRANCISCO, *January 5th*, 1853.

In the same case the deposition of John Bidwell, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 8 of this Transcript.)

SAN FRANCISCO, *August 9th*, 1853.

In the same case the counsel for the claimant filed the following stipulation, to wit:

(Vide page 19 of this Transcript.)

SAN FRANCISCO, *August 18th*, 1853.

In the same case the counsel for the claimant filed the following stipulation, to wit:

(Vide page 19 of this Transcript.)

SAN FRANCISCO, *August 23d*, 1853.

Case No. 226 was called; the counsel for the claimant read the evidence; agued, submitted, and taken under advisement by the board.

SAN FRANCISCO, *February 6th*, 1855.

In the same case Commissioner Alpheus Felch delivered the opinion of the board, confirming the claim.

(Vide page 31 of this Transcript)

And the following order was made, to wit :

(Vide page 34 of this Transcript.)

A.—*Petition.*

To the Honorable the Commissioners for ascertaining and settling Private Land Claims in the State of California.

The petition of Michael C. Nye shows, that on the thirty-first day of December, A. D. 1843, he applied to the then governor of the two Californias, Manuel Micheltorena, for a grant of land called "Willy," consisting of four leagues, and bounded as follows :

On the north by the Arroyo de los Venados, (Deer creek); on the east by the barren lands (Tierra Esteril), between the river Sacramento and the Sierra Nevada; on the south by the rancho of Arroyo Chico; and on the west by the river Sacramento. That on the 4th day of January, 1844, said application was by said Micheltorena referred for examination to John A. Sutter, who then had charge of the district of the Sacramento river.

That on the 27th day of January, 1844, said Sutter reported on said application, and certified that the land asked for was unoccupied.

That on the 22d day of December, 1844, the said Governor Micheltorena, then acting under the authority of the Republic of Mexico, granted, ratified, and confirmed to all those who had obtained a favorable report from said Sutter, a full and complete title to the lands which they had applied for; all of which will more fully appear from the application, order of reference, report of said Sutter, and a copy of said grant of said Micheltorena, together with the translations of the same hereto annexed and filed herewith.

Wherefore, your petitioner prays that your honorable board will examine his said claim and decide upon its validity.

WILLIAM WALKER, *for Petitioner.*

Filed in office May 10th, 1852.

GEO. FISHER, *Secretary.*

Recorded in Record of Petitions, volume 1, page 91.

GEO. FISHER, *Sect'y.*

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Deposition of J. Sanders.

OFFICE OF THE BOARD OF COMMISSIONERS
OF CALIFORNIA LAND CLAIMS,

SAN FRANCISCO, *August 18th*, 1852.

On this day, before James Wilson, one of the commissioners to ascertain and settle private land claims in California, came John Sanders, a witness produced on behalf of the claimant, Michael C. Nye, whose petition is No. 226 on the docket of the board, and was duly sworn.

(The law agent was notified and did attend.)

Question 1st. What is your name, age, and place of residence?

Answer. My name is John Sanders; my age is thirty-six; my place of residence is at John Bidwell's, in Chico, Butte county.

Question 2d. What length of time have you lived in California, and at what place?

Answer. I have lived in California since the year 1842, and most of the time in Sacramento valley.

Question 3d. Do you know Michael C. Nye; if yea, how long, and where have you known him?

Answer. I do know Michael C. Nye; I have known him since 1844; he was on the rancho where Marysville is now built.

Question 4th. Do you know of Michael C. Nye receiving a grant of land in the Sacramento valley from the Mexican government; if yea, state what you know about it, and where is the land situated?

Answer. I have understood he had received a grant of land from the governor of California, in 1845. It is situated in the Sacramento valley, on the east side of the Sacramento river, between the rancho of Mr. Dichny, that is surrounded by John Bidwell, and the rancho of Peter Larsen.

5th question. Do you know of Michael C. Nye having upon the land you have described as having been granted to him, and state all you know about the matter?

Answer. In the fall of 1845 I assisted Mr. Nye to drive five or six hundred head of cattle from Hock farm, the residence of Captain Sutter, up to the rancho of Nye. Nye had a log-house built on the place where he lived. I staid with Nye on the place three or four weeks, assisting him to take care of the cattle, until they became used to the place.

There was a band of mares and some tame horses on the place belonging to Nye, John Stevens, and Smith; I should think, in all, about six hundred heads; Nye staid on the place three or four months after I left. I joined the California battalion, under Colonel Fremont, on Butte creek, and went to the lower country. I know no other thing being done by Nye after this time; he had already built a large corral.

Cross interrogatories propounded by the Law Agent.

Question 1. How long did Mr. Nye occupy the place, and why did he leave it?

Answer. Nye occupied it three or four months; he was in dread of the Indians, who were coming down, killing his cattle and driving them off. He took them back, down to Hock, on a place occupied by Cordua on the Yuba.

Question 2d. Has Nye ever occupied the place since?

Answer. He has not to my knowledge; he left, as I have above stated, in consequence of his troubles with the Indians.

Question. Do you know anything adverse to this claim?

Ans. I do not.

JOHN SANDERS.

AUGUST 18*th*, 1852.

Subscribed and sworn to before me.

JAMES WILSON,
Commissioner.

I hereby consent to the taking and filing of the foregoing testimony in the claim of M. C. Nye, No. 226 on the docket of the United States land commissioners.

August 18, 1852.

GEO. W. COOLEY,
U. S. Law Agent.

Filed in office September 3d, 1852.

GEORGE FISHER,
Secretary.

Recorded in Evidence Book, vol. 1, page 600.

GEO. FISHER, *Sec'y.*

Deposition of S. J. Hensley.

SAN FRANCISCO, *January 4th*, 1853.

On this day, before Commissioner Harry J. Thornton, came Samuel J. Hensley, a witness on behalf of the claimant, Michael C. Nye, petition No. 226, and was duly sworn, his evidence being given in English.

The United States associate law agent was present.

Questions by Claimant.

1st question. What is your name, age, and place of residence, and how long have you lived there?

Answer. My name is Samuel J. Hensley; my age is about thirty-five years; my residence in San José, and I have resided in California, generally in the Sacramento valley, since the autumn of 1843.

Question. Are you acquainted with the handwriting of Manuel Micheltorena, Manuel Jimeno, and J. A. Sutter? If yea, look upon

the document now shown you, being exhibit marked B, in the petition of Mr. M. C. Nye, filed in the secretary's office of the board of land commissioners for California, No. 226, and say if the signatures of the persons above named, where they occur in and upon said document, are or not their genuine signatures.

Answer. I am acquainted with the handwritings of the persons named above, having seen them write, and I have examined the document described in the interrogatory. The signatures of Micheltorena, Jimeno, and where they occur thereon, are their genuine signatures.

Question 3d. Look at the document "Exhibit C" to the petition above mentioned by docket No. 226, and say if the handwriting of J. A. Sutter, where it occurs thereon, is the genuine signature of said Sutter?

Answer. I have examined the said document, and the signature of Sutter thereto is genuine.

Question 4. Do you know anything about the settlement and occupation of the land claimed in this case? If so, state what you know.

Answer. In the year 1845 I was in charge of the Hock farm of Captain J. A. Sutter, and the vaqueros of that farm, under my orders and in my presence, aided in collecting and starting the stock of Nye to his rancho. I did not accompany them all the way, but I learned afterwards that Nye occupied his land and stocked it; I was never there while he so occupied, but he visited me, and I always understood from him and others that he did settle and inhabit the land. A man by the name of John Sanders, also John Stevens, went with Nye, and lived with him on the said land.

United States law agent present.

S. J. HENSLEY.

Sworn to and subscribed before me, this 4th January, 1853.

HARRY J. THORNTON,
Commissioner.

Filed in office January 4th, 1853.

GEORGE FISHER, *Secretary.*

Recorded in Evidence B., volume 2, page 411.

GEORGE FISHER, *Secretary.*

Deposition of John Bidwell.

SAN FRANCISCO, *January 5th*, 1853.

On this day, before Commissioner Harry J. Thornton, came John Bidwell, a witness on behalf of the claimant, Michael C. Nye, petition number 226, and was duly sworn, his evidence being given in English. The United States associate law agent was present.

Questions by Claimant.

Question 1. What is your name, age, and residence?

Answer. My name is John Bidwell; my age thirty-three; and my residence Chico, Butte county, California.

Question 2. Are you acquainted with the handwriting of Manuel Micheltorena, Manuel Jimeno and John A. Sutter? If yea, look at the document marked B, and referred to in the petition as exhibit thereto, and say whether the names of said persons, where they occur in said document, are their genuine signatures, and state what you know of the map attached to said document B.

Answer. I am well acquainted with the handwriting of Micheltorena, Jimeno and Sutter, having seen them write, and upon examination the said Exhibit B to the petition in this case filed. I state the signatures of the said persons to be their genuine signatures. In regard to the said map, I drew it myself for the party, to accompany his petition for his land to the governor.

Question 3d. Look at the document marked Exhibit C in the petition filed in this case, and say whether or not the name of Captain Sutter, where it occurs therein, is his genuine signature?

Answer. The signature of Sutter to the document in the interrogatory last above mentioned is his genuine signature.

Question 4. If you know anything of the occupation of the land claimed in this case by the claimant, please state what you know about it.

Answer. I know that in the year 1845 Mr. Nye, the claimant, moved unto the land with his cattle and property.

J. BIDWELL.

I acknowledge due notice.

R. GREENHOW,
United States Law Agent.

Sworn to and subscribed before me, this 5th of January, 1853.

HARRY J. THORNTON,
Commissioner.

Filed in office January 5th, 1853.

GEORGE FISHER, *Secretary.*

Recorded in Evidence B., vol. 2, page 418.

GEORGE FISHER, *Secretary.*

[*For map see original, between pages* 7 and 8.]

Sello Tercero un Peso.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MANUEL CASTANARES.

MICHELTORENA.

[SEAL.]

Folio 1284 - Dept. 2

Ap. 139. 68

A su Excelencia el Señor Comandante General y Gobernador de ambas Californias.

Michael C. Nye, natural de los Estados Unidos, y residente en este departamento hace dos años ante V. E. con el debido respeto me presente y digo que hallandome presente degue que hallandome posesor de algo de ganado y caballos y deseoso de conseguir un terreno baldio lindado por el lado del Norte, por el arroyo de los Venados; del este se separa de la Sierra Nevada por tierra esteril; por el sud esta lindado por el rancho de Arroyo Chico, y por el oesto por el Rio del Sacramento, se llaman Willis, y consiste de cuatro leguas en quadro segun cousta el adyunto diseño.

A. V. E. suplico se digne acceder a esta solicitad en lo que recibire merced.

Monterey, y 22 de Diciembre, de 1843.

MICHAEL C. NYE.

MONTEREY, *D'bre* 31, *de* 1843.

Informe el S. s'rio del despacho tomando las que al efecto crea necesarias.

MICHELTORENA.

Como dispone el ex'mo Sr. gobernador, pase la precedente instancia al Sr. Sutter, como encargado de la frontera del Sacramento, pa. que informe sobre su contenido.

Monterey, 4 de Enero, de 1844.

MANUEL JIMENO.

El terreno que solicita en este pedimiento el S'r D'n Michael Nye, y que es representado en el adjunto diseño esta des ocupado y doy esta artificacion para los fines que convengan.

Nueva Helvetia, Enero 29, de 1844.

Juzgado del Distrito del Rio Sacramento,
J. A. SUTTER.

Filed in office May 10th, 1852.

GEO. FISHER, *Sect'y.*

Manuel Micheltorena, General de Brigada del Ejercito Mejicano, Ayudante General de la plana mayor del mismo, Gobernador, Comandante Gral. é Inspector del Departamento de Californias.

No pudiendo ahora por este sumamente ocupado este supremo gobierno departamental estender uno por uno los titulos respectivos a todos los cuidadanos que han solicitado terrenos con informes de su favor del S'or Don Augusto Sutter, capitan y juez encargado de la jurisdicion de la Nueva Helvetia y Sacramento, a nombre de la nacion Mejicana, les confiero por estas letras la propriedad de ellos y sus familias de los respectivos terrenos marcadas en sus intencias y diseños a todos y a cada uno de los q. hagan solicitado y obtenido informe favor-

able del espresado S'or Sutter, hoy dea de la f'ha sin q. nadie pueda disputarles su propriedad, serviendoles una copia de este que les dara mas adelante el S'or Sutter, de titulo formal con el que se presentaran a este gobierno por estenderles el mismo titulo en la debida forma y papel sellado correspondiente y pa. la debida constancia en todos tiempos doy este documento qe. sera reconocido y acatado por todos las autoridades civiles y militares de la nacion Mejicana, en este y en los demas departamentos autorizado debidamente con los sellos militar y de gobierno en Monterey, a viente y dos de Diciembre, de mil ochocientos y cuarenta y cuatro.

MICHELTORENA.

Certifico que es copia.
Nueva Helvetia, Junio 8, de 1846.

J. A. SUTTER.

Filed in office May 10th, 1852.

GEO. FISHER, *Sec'y*.

Doc. H. Hall and J. W., prov'd by Sutter and Bidwell, and annexed to depo. of the latter, before Com'r Hall.

Manuel Micheltorena, G'ral de Brigada del Ejercito Mejicana, Ayud'te G'ral de la plana mayor del mismo, Gobernador, Comd'te G'ral, y Inspector del Departamento de Californias.

[SELLO.]

[Comandancia General de la Alta California.]

No pudiendo ahora por estar sumam'to ocupado este gobierno supremo departamental, estender uno por uno los titulos respectivos a todos los ciudadanos que han solicitado terrenos, con informe a su favor del S'r D. Augusto Sutter, capitan y juez encargado de la jurisdicion de Nueva Helvetia y Sacramento, a nombre de la nacion Mejicana, les confiero por estas letras la propriedad para ellos, y sus familias de los respectivos terrenos marcadas en sus instencias y diseños à todos y a cada uno de los qe. hallan solicitado, y obtenido informe favorable del Espresado Señor Sutter, h'ta hay dia de la f'ha. Sin que nadie pueda disputarles, su propriedad sirviendoles una copia de este que les dura mas adelante el S. Sutter, de titulo formal con el que se presentaran a este gobierno pa. estenderles el mismo titulo en la debida forma, y papel sellado correspondiente, y pa. la divida constancia en todos tiempos doy este documento que sera reconocido, y acatado por todas las autoridades civiles y militares de la nacion Mejicana en este y las demas departamentos autorizado debidam'te con los sellos militar, y de gobierno en Monterey, a veinte y dos de Diciembre, de mil ochocientos cuarenta y cuatro.

MAN'L MICHELTORENA.

STATE OF CALIFORNIA,
Sacramento county.

On this 28th day of June, A. D. 1850, I, Lewis A. Birdsall, hereby certify that John Bidwell, Samuel J. Hensley, George McKinstry, and

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Isaac T. Mott, severally came before me, and being duly sworn by me, and being all credible witnesses, depose and say, on oath, that they knew Micheltorena, the above named grantor, and are well acquainted with his written signature, having seen him write, and that they verily believe that he signed the above with his own hand.

In witness whereof, I, Lewis A. Birdsall, recorder in and for the county of Sacramento, and State of California aforesaid, have set my hand and seal, the day and year above written. [SEAL.]

L. A. BIRDSALL,
Recorder Sac. Co., Cal.

Filed in office January 28th, 1853.

GEO. FISHER, *Secretary*.

D.—Translations of B and C.

Translation.

Third Stamp—One Dollar.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the departments of the Californias, for the year one thousand eight hundred and forty-three.

MICHELTORENA. MANUEL CASTANARES.

[Custom house Seal.]

To his excellency the Commandant General of both Californias:

Michael C. Nye, native of the United States, and resident in this department for two years, before your excellency, with due respect, present myself, and say:

That, possessing some cattle and horses, and being desirous to obtain a vacant tract of land, bounded on the north side by the Arroyo de los Venados, (Deer creek,) on the east divided by the Sierra Nevada, by the sterile lands, on the south bounded by the rancho of Arroyo Chico, and on the west by the river Sacramento, which is called "Willy," and consists of four leagues square, as is shown by the annexed design, I pray your excellency may deign accede to this supplication, in which I shall receive a favor.

MICHAEL C. NYE.

Monterey, 22d December, 1843.

MONTEREY, *December 31st*, 1843.

Let the secretary of state report, and take such informations as he may think necessary.

MICHELTORENA.

The most excellent governor orders that the foregoing petition be referred to Mr. Sutter, as the commissioner for the frontier of the Sacramento, that he may report on its contents.

MANUEL JIMENO.

Monterey, 4th January, 1844.

The tract of land which Mr. Michael C. Nye solicits in his petition, and which is represented in the annexed design, is unoccupied, and I give this certification for the purposes required.

J. A. SUTTER.

New Helvetia, 27th January, 1844.

JUSTICE'S COURT,
District of the river Sacramento.

Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the staff of the same, Governor Commandant General and Inspector of the Department of Californias.

As, on account of its excessive occupations, this supreme departmental government cannot now extend only on the respective titles to all the citizens who have solicited tracts of land, with reports in their favor, from Mr. Augustus Sutter, captain and judge, having in charge the jurisdiction of New Helvetia and Sacramento:

In the name of the Mexican nation I confer on them and their families, by these letters, the property of the respective tracts of land marked in their petitions and designs, to all and every one of those who have solicited and obtained favorable reports from the said Mr. Sutter up to this date.

Without that any person may dispute them their property, serving them a copy of these letters, which Mr. Sutter will afterwards give them as a formal title, with which they will present themselves to this government, to extend to them the same title in due form, and corresponding stamped paper. And that it may be duly evidenced in all times, I give this document, which will be acknowledged and complied with by all authorities, civil and military, of the Mexican nation, in this and other departments, duly authorized with the seals of the civil military government, in Monterey, this twenty-second day of December, 1844.

MICHELTORENA.

I certify that this is a copy. New Helvetia, June 8th, 1846.

J. A. SUTTER.

Filed in office May 10th, 1852.

GEO. FISHER,
Secretary.

Stipulation.

U. S. Land Commission, number 226.—Michael C. Nye, claimant.

In this case it is agreed between the United States law agent and the counsel for the claimant that the deposition of Captain John A. Sutter, and the original document of general title from Governor Micheltorena, made an exhibit to his said deposition, as also the deposition of

Bidwell, contain in case number 201 of Samuel J. Hensley vs. United States, be read and considered as evidence, as if retaken.

ROBERT GREENHOW,
Associate Law Agent.

Filed in office August 9th, 1853.

GEORGE FISHER,
Secretary.

Recorded in Journal, vol. 3, page 369.

GEORGE FISHER,
Secretary.

Stipulation.

U. S. Land Commission, number 226.—Michael C. Nye, claimant.

John A. Sutter, a witness produced and duly sworn on the part of the claimant in this case, (number 226, Michael C. Nye, for the rancho called Willy,) deposeth: That in view of the document C, now before him, the certificate on the margin thereof dated June 8th, 1846, is genuine, and was made and signed by him at the date and place as it purports, and that the said document, with the said certificate so attached, was at the same time and place delivered to the said Michael C. Nye. That the said document is a true copy, as it purports, of an original order or decree of Manuel Micheltorena, then military commandant and governor of California, then in possession of the department; that the said original document was, and is, known to deponent to be genuine and authentic. That deponent was, at the time of making and signing the said certificate and delivery of the same, with the said document, to said Nye, acting in the official capacity specified therein; and deponent further testifies, in view and in inspection of the document marked B, now on file in said case number 226, that the names of Michael C. Nye, Micheltorena, Manuel Jimeno, and John A. Sutter, where they occur upon said document, at the time and place therein stated, and that the said map was attached to and accompanied the said document at the time I signed my name thereto.

J. A. SUTTER.

It is agreed that the foregoing statement shall be read in evidence in the above stated case, together with the deposition of John A. Sutter in the case of Peter Lassen, being number 182, taken this day, August 17th, 1853.

V. E. HOWARD,
Law Agent United States.

E. O. CROSBY,
Of Counsel for Michael C. Nye, Claimant.

Filed in office August 18th, 1853.

GEO. FISHER,
Secretary.

Recorded in Journal, volume 3, page 375.

GEO. FISHER, *Secretary.*

Deposition of John A. Sutter.

Case No. 201 upon the docket for confirmation of the grant of rancho Aguas Nieves.

Board of Commissioners to Ascertain and Settle Private Land Claims in California.

On this 13th day of May, A. D. 1852, came before me, James Wilson, one of said commissioners, Captain John A. Sutter, a witness offered by Samuel J. Hensley, petitioner, and being duly sworn gave the following testimony.

George W. Cooley, law agent of the United States, was notified and did attend to the taking of the testimony of said witness.

In answer to interrogatories propounded by petitioner's counsel the deponent answers as follows:

I am acquainted with the handwriting of Governor Manuel Micheltorena, and have seen him write very often. The paper now shown me as an original paper, and purporting to be the certificate of the governor, of naturalization of Samuel J. Hensley as a citizen of Mexico, is a genuine paper, and the signature of Manuel Micheltorena to said paper is his true signature.

The commissioner has affixed his initials to said paper and marked it as follows: J. N., No 1.

I have also compared said paper with document marked Exhibit C on the files in this cause, and I find the said Exhibit C to be a true copy in the Spanish language, and the translation of the same into English to be substantially correct.

I further state that an original paper, purporting to be the original of paper marked Exhibit A in said cause, which is now shown me, is a genuine paper, and the signatures of Governor Manuel Micheltorena, Secretary Manuel Jimeno, the signature of Samuel J. Hensley, and my own signature, where they occur on said paper, are all genuine signatures of those several persons.

The last paper attached to said Exhibit A, marked by the commissioner as follows, J. W., I have carefully examined, and I state that I gave a copy of the original paper which I had received from Governor Micheltorena to Samuel J. Hensley, as secretary, for the lands he claims, until such times as he could perfect his title to the same according to the forms required. I gave that copy to Samuel J. Hensley about the 20th of April, A. D. 1845.

The map which is attached to the original paper marked J. W., No. 2, is an original, of which a copy is attached to Exhibit A in this cause.

I was military commander of the northern frontier, and excercised civil juisdiction in all the northeastern portion of the territory of Upper California, in the years 1844 and 1845. I know the rancho Aguas Nieves, claimed by Samuel J. Hensley, and the same was within my jurisdiction. It is on Butte creek, in the Sacramento valley, about one hundred miles north of Sutter Fort. Mr. Hensley applied to me in the

spring of 1845, to be put in juridical possession of the rancho Aguas Nieves. I did not give him juridical possession of the same, as he requested, for the reasons that I was engaged in a military campaign with Governor Micheltorena from January 7th, 1845, to the first of April, 1845; immediately on my return from the said campaign I had to go out again on an Indian campaign. Soon after my return from the said Indian campaign, Col. Fremont came with his party into that section of the Territory, and a general revolution followed thoughout California. I soon ceased to exercise either military command or civil jurisdiction; for these reasons I could not comply with his request.

Upon examination of the witness, by G. W. Cooley, law agent of the United States, the witness says that his civil jurisdiction extended from the San Joaquin northward, over the whole Sacramento valley.

J. A. SUTTER.

The law agent, G. W. Cooley, esq., objects generally to the foregoing deposition as incompetent, and reserving generally all legal objections.

May 13th, 1852. Subscribed and sworn to before me.

JAMES WILSON, *Commissioner*.

Filed in office May 13th, 1852.

GEO. FISHER, *Sec'y*.

Recorded in Book of Ev., volume 1, page 514.

GEO. FISHER, *Sec'y*.

Deposition of John A. Sutter.

Number 182.

OFFICE OF THE COMMISSIONERS OF LAND CLAIMS IN CALIFORNIA.

This day, before Commissioner Robert A. Thompson, came John A. Sutter, a witness in behalf of claimant, Peter Lassen, number 182, and, after being duly sworn, deposed as follows:

Present, Edward Norton, esq., attorney for claimant, and Volney E. Howard, esq., U. S. law agent.

Question by claimant's attorney. What is your name, age, and place of residence?

Answer. My name is John A. Sutter; age fifty years, and residence Hock farm, Sutter county, California.

Question by same. Do you know Peter Lassen; if so, how long have you known him?

Answer. I have known him since 1841.

Question by same. Please to look at the document now shown you, marked No. 1, with the initials A. F. and H. H., and state whether you know the signatures of Micheltorena, Peter Lassen, Manuel Jimeno, Estrada, and John A. Sutter, which appear in that document, and say whether they are genuine or not?

Answer. I am acquainted with the signatures of all the persons named, and have no doubt they are genuine.

Question by same. Please to read the report in that document, purporting to be made by you, and state if you made it at the time it bears date.

Answer. It is in my handwriting, and was made by me at the time it bears date.

Question by same. Please to look at the sketch or map marked on the back number 10, and with the initials H. H., and also A. F., and say if that is the sketch or plan referred to in said report.

Answer. It is the same.

Question by same. Do you know where the land applied for by Peter Lassen is situated?

Answer. Yes, very well.

Question by same. When you made that report, were there any settlements in that vicinity?

Answer. There were not; Peter Lassen was the first that went up to the Upper Sacramento valley; I had to protect him there from the Indians at one time, with three hundred men, all Indians except about twenty, who were white men.

Question by same. Please to look at the document numbers 8 and 9, with the initials H. H., and state whether your signature to the certificate on the back is genuine, and whether it was made at the time it bears date.

Answer. It is genuine, and was made at the time of its date.

Question by same. State whether Peter Lassen went with you about that time to serve in the army of Micheltorena; and if so, where you went.

Answer. He did; we marched first to San José, then to Monterey, where we relieved the general, Micheltorena, and marched with him to Los Angeles, and Peter Lassen did his duty as a faithful soldier.

Question by same. Did you know James Alexander Forbes at that time; if so, where did he reside, and in what capacity?

Answer. I did; he was then the British vice-consul, and resided in Santa Clara, near San José.

Question by same. Please to look at the document marked number 13, with the initials R. T., and state whether the signatures of Manuel Micheltorena and Manuel Jimeno are genuine or not.

Answer. They are genuine.

Cross-examination by U. S. Law Agent.

Question by law agent. Have you any distinct recollection of the map or sketch referred to in the preceding part of your deposition?

Answer. I have not, but it is generally correct. I have been on the ground and put Peter Lassen in possession, as it was my duty to do.

Question by same. Do you know where the original of the document marked numbers 8 and 9 and H. H. now is?

Answer. In the archives in the possession of Señor De Saldo, in the surveyor general's office.

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Question by same. To whom did Governor Micheltorena deliver said original paper at the time it was issued?

Answer. To me, by courier or express.

Question by same. State why the document or title was delivered to you, and all the circumstances connected with what is termed the general title.

Answer. It was done at my request. The governor was then blockaded in Monterey, and would not deliver the titles to the American and other emigrants, and at my instance he sent me the general title; there were many emigrants, chiefly Americans, who were desirous of obtaining lands, and I advised the governor to give them their titles at once, and he had not time to do it any other way. I never knew the governor was blockaded until the courier came with the paper above referred to.

Question by same. State what method you adopted in giving titles to each individual settler.

Answer. By giving certified copies of the original paper marked numbers 8 and 9 and H. H. to those who had rendered meritorious services to the country, and who applied to me. Governor Micheltorena, at my request, made a speech to the soldiers and promised lands to all those whom I should recommend as worthy to receive it. The general title was issued before the men marched, and the copy to Lassen was also delivered before we marched from New Helvetia; in some cases the copies were not delivered to the parties until after my return, but only to such as I thought deserved it. In the speech of Governor Micheltorena he promised to deliver grants to all whom I should recommend, referring as well to those to whom copies had been delivered as to those I might deliver them to afterwards.

Question by same. When you gave possession to Peter Lassen of the land granted him, did you measure the lands or establish any corners?

Answer. I did not; I did not consider it necessary; I did not measure the land, or go through any of the customary ceremonies; there were no surveyors or means of measurement; it was expected that the lands would be surveyed afterwards.

Question by same. By whom, and under what authority, was it contemplated that government grants should be surveyed after juridical possession?

Answer. The government had no surveyor, and if the owner of a farm wanted it surveyed he did it at his own expense. It was not the custom in giving juridical possession to use a compass or measure the land with a rope or chain; in giving such possession I have never measured the land with a rope or chain, or anything else; and further deponent saith not. J. A. SUTTER.

Sworn to and subscribed before me, August 18th, 1853.

R. AUG. THOMPSON, *Commissioner.*

Filed in office August 23d, 1853.

GEORGE FISHER, *Secretary.*

Opinion of the Board.

MICHAEL C. NYE
vs.
THE UNITED STATES.

For the place called "Willy," in Butte county, containing four square leagues of land.

This is a claim under a grant, which is usually denominated the general title, issued by Governor Micheltorena, under date of December 22d, 1844, and delivered to Captain John A. Sutter; the terms and effects of which are fully considered in the opinion delivered by this commission in case No. 196. The evidence presented by the claimant shows that said Nye petitioned the governor for a grant of the land claimed in December, 1843; that a reference for information was, by direction of the governor, made to Captain Sutter, and that the latter made a favorable report therein on the 27th of January succeeding, and that a copy of the general title was given to said Nye, duly certified by Captain Sutter, June 8, 1846.

We think the testimony sufficient to show that the claimant is one of the persons designated as grantees in said general title, and that he is, therefore, entitled to the benefit of its provisions, in the same manner as if he was expressly named therein as grantee. It remains to inquire whether the premises granted are sufficiently defined to identify and segregate the land, and whether the conditions imposed on the grantee by the colonization laws and regulations have been complied with by him.

The land is described in the petition to the governor as bounded on the north by the Arroyo de los Venados, (Deer creek,) on the south by the rancho of Arroyo Chico, on the west by the river Sacramento, and on the east by the sterile lands which separate it from the Sierra Nevada, *is* shown by the annexed map. The map is drawn with artistic skill, with delineation of the land solicited, and with the natural and artificial objects called for in the description carefully laid down. In some respects, however, the location and exterior boundaries of the land intended to be granted are more specially defined than in the petition.

The northern line is described as bounded on Deer creek, but on the map it is shown that the premises do not extend up the river.

The southern line is the same on both, and commencing at that line and extending up the river, with a width of one league; there is no difficulty in the location.

The map being referred to in the original petition, and both specified in the grant, are to be considered together as containing the description of the premises granted; thus considered, there seems no serious difficulty in understanding their true import and segregating the land intended to be conveyed.

It is located on the east bank of the Sacramento river, commencing at the line above indicated on the south and extending up said river,

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four leagues in length and one in width, and containing four square leagues of land.

As to the occupation of the land by Nye, it is proved that within a year after the grant was made, he took several hundred head of cattle and horses on the place, and that he built a house upon it, in which he lived.

He was disturbed by the Indians after he had lived there four or five months, but he seems in good faith to have made his settlement on the land, designing it as the permanent establishment of his ranch for stock raising, and as his personal residence. And we do not think the evidence of his interruption on it sufficient to show any abandonment of the place; although the proof is not very strong in this part of the case, it must be regarded as establishing prima facie the performance of the condition imposed by the law.

We shall decree in favor of the claim. Confirmed.

Filed in office 6th February, 1853.

GEORGE FISHER, *Secretary*.

Decree of Confirmation.

MICHAEL C. NYE
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed. The land of which confirmation is hereby made is known by the name of Willy, situated in Butte county, and is the same formerly resided upon by said Nye, and is bounded and described as follows, to wit: bounded on the south by the place known as the Rancho del Arroyo Chico, at the distance of about half a league south of the mouth of the Arroyo Seco; on the north by a line running parallel with said south line, and at a distance of four leagues from it; on the west by the Sacramento river, and on the east by a line parallel with the general course of said river; on the west side of said premises, and at the distance of one league from the same, reference being had to the map which is on file in this case, for more particular description of the location of the same, said premises containing four square leagues of land, and no more.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office 6th February, 1855.

GEO. FISHER, *Sec'y*.

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby

ordered that two transcripts of the proceedings, and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's Certificate.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-four pages, numbered from 1 to 34, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witness upon which the same is founded, on file in this office, in case No. 226 on the docket of the said board, wherein Michael C. Nye is the claimant, against the United States, for the place known by the name of Willy.

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, [SEAL] California, this tenth day of August, A. D. 1855, and of the independence of the United States of America the eightieth.

GEO. FISHER, *Sect'y.*

Endorsed: Filed August 11th, 1855.
JOHN A. MONROE, *Clerk.*

Notice of Appeal.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 10th October, 1855.

226.—"Willy"— Michael C. Nye, claimant.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 27th day of August, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Endorsed: Filed November 22d, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

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Petition.

To the Honorable District Court of the United States in and for the northern district of California.

THE UNITED STATES, Appellants,
vs.
MICHAEL C. NYE, Appellee.
No. 268.

The petition of the United States, by their attorney, represents, that this cause is an application for a review of the decision of the board of commissioners, whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the 11th day of August, 1855; that a notice of appeal was filed on the 22d day of November, 1855, and that the land claimed lies in the said district; that the said claim is invalid.

Wherefore, appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully, &c.,
S. W. INGE, *U. S. Dist. Att'y.*

Endorsed: Filed April 21st, 1856.
JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Answer.

United States District Court for the northern district of California.

THE UNITED STATES
vs.
MICHAEL C. NYE, Appellee.
Answer.—No. 268.

The respondent, for answer to the petition filed in this case, answers and says: It is true that the lands mentioned in said petition and in said transcript of the proceedings before the said board of commissioners lie within said northern district of California, and within the jurisdiction of this court. But this respondent denies that his title to the said lands is invalid, and avers that the same is valid, and prays that the decision of the said board be affirmed, and his title be decreed to be valid.

MICHAEL C. NYE.
By E. O. CROSBY,
his Attorney.

Endorsed: Filed April 21st, 1856.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Decree.

In the United States District Court holden for the northern district of California.

THE UNITED STATES, Appellants,
vs.
MICHAEL C. NYE, Appellee. } Case No. 268.

This cause, being an appeal from a decision of the United States land commissioners, appointed under an act of Congress, passed March 3d, 1851, to ascertain and settle private land claims in the State of California, coming on for hearing at a stated term of said court, on the record and transcript of the proceedings of said board of commissioners in said case, and the petition and answer in this court, and the district attorney of the United States having been heard for the appellants and counsel appearing for the appellee, it is ordered, adjudged, and decreed that said claim is valid, and that the same is hereby confirmed.

It is further ordered, adjudged, and decreed, that the decision of said commissioners is in all things affirmed; it is further ordered, decreed, and adjudged that the land of which confirmation is hereby made is known by the name of Willy, situated in the county of Butte, State aforesaid, and bounded as follows: On the south by the place known as the Rancho del Arroyo Chico, at the distance of about half a league south of the mouth of the Arroyo Seco; on the north by a line running parallel with said south line and a distance of four leagues from it; on the west by the Sacramento river, and on the east by a line parallel with the general course of said river, on the west side of said premises, and at a distance of one league from the same, reference being had to the map which is on file in this case, for a more particular description of the location of said premises; containing four (4) square leagues of land and no more.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed February 16th, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifty-seven. Present, the honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
MICHAEL C. NYE. } D. C. 268.—L. C. 226.

In this case, on application of the United States attorney, made in open court, it is ordered by the court that an appeal in behalf of the

United States from the final decision of this court, rendered at the present term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed March 24th, 1857.

JOHN A. MONROE, *Clerk*.
By W. H. CHEVERS, *Deputy*.

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages, from one to twenty-eight inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the depositions, orders, and decree filed in this office in the case entitled The United States, appellants, vs. Michael C. Nye, appellee.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court, this sixteenth day of July, A. D. 1857, and of the independence the eighty-second. [L. S.]

JOHN A. MONROE, *Clerk*.
By W. H. CHEVERS, *Deputy*.

Filed 18th August, 1857.